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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/694,563

10/24/2003

Matt F. Surowiecki

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7590 06/06/2008  
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EXAMINER

CHAPMAN, JEANETTE E

ART UNIT

PAPER NUMBER

3633

MAIL DATE

DELIVERY MODE

06/06/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/694,563	<b>Applicant(s)</b> SUROWIECKI, MATT F.	
	<b>Examiner</b> Jeanette E. Chapman	<b>Art Unit</b> 3633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (3465488) in view of Gibson (3066772) and Osterle (6428258).

**Claim 9**

Miller discloses a structural wall, comprising:

an elongated, downwardly opening, sheet-metal, upper channel member 10 having spaced apart sidewalls 11 defining an upper channel space between them; see figure 2  
an elongated sheet-metal stud 2, including an upper end portion within the upper channel space and including spaced-apart sidewalls that are contiguous the sidewalls of the upper channel member; see figure 1

wherein at least one side wall of the upper channel member includes a screw opening 16 and an adjacent side wall of the upper end portion of the stud includes a slot but not a longitudinal slot; Gibson discloses a elongated sheet metal stud 10 with an adjacent side wall of the upper end portion includes a longitudinal slot 21. Further the structure of Gibson includes a screw 22 to engage with other structural elements of the structural wall. It would have been obvious to modify the sidewall of the stud of Miller to include the longitudinal slot to provide for adjustability between the upper channel member and

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the stud.

a screw 15 having a head outwardly of said opening in said sidewall of the upper channel member contiguous with the sidewall of the upper channel member, an unthreaded shank portion, shown in figures 3-4 within said opening in the side wall of the upper channel member 10 and within the slot in the side wall of the upper end portion of the stud 2, and Miller lacks the treaded portion connected to the unthreaded portion of the screw;

Osterle discloses a nail/screw to connect structural wall elements together. The screw includes a head 5, a threaded portion 3/4 and an unthreaded portion 11; wherein the threaded portion 3/4 of the screw includes an end thread contiguous the slot/opening, said end thread being wider than the slot so that it will contact the structural member (such as a stud) on opposite sides of the slot and the screw will be prevented by such contact from moving axially outwardly through the slot/opening;

wherein the non threaded portion 11 of the shank is narrower than said slot/opening;

wherein the screw fastener has a self-tapping pointed end 2 at its end opposite its head, said self-tapping end being adapted to bore a hole

the slot of Gibson slot is long enough to permit vertical movement of the stud relative of the screw and the upper channel member; and

wherein the stud can move up and down relative to the screw and the upper channel member.

and with the modification of Winter et al and Gibson, the screw of winter incorporated into Miller is free of connection with the upper end portion of said stud. Figure 3 of Miller shows his faster 15 is free of connection with the upper end portion of stud 2. figure 1 shows an upwardly opening, sheet-metal, lower channel member having spaced apart side walls defining a lower channel space between them and said sheet-metal stud including a lower end portion that is within the lower channel space and is connected to the lower channel member.

Claims 2-4 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (3465488) in view of Gibson (3066772) and Osterle (6428258) and further in view of Laughlin (5740994).

Miller lacks the dimpled openings for the upper and lower channel members to receive a screw fastener. Laughlin discloses the importance of antiwist dimples to strengthen the construction of the stud around the hole in which the screw is inserted. Laughlin discloses the screw with the threaded and unthreaded portions; see element 49. It would have been obvious to increase the number of screw holes/dimples spaced apart and positioned as desired on both sides of the channel members to accommodate as many screws as needed to join the structural elements together. The position/disposition of the dimples/holes and the number lack criticality since applicant lacks the dimples not aligned to perform inferiorly or to not to perform or to function in some manner. It would have been obvious to include the dimples to strengthen the construction of the stud in the area of the screw holes as taught by Laughlin.

Claims 4 and 8:

With the modification of Osterle, miller now includes a screw fastener with a self-tapping pointed end at its end opposite its head, said self-tapping end being adapted to bore a hole through the base of an selected dimple in response to the screw being rotated while the pointed end is in the dimple.

Applicant's arguments are moot in view of the new ground of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E. Jeanette whose telephone number is 571-272-6841. The examiner can normally be reached on Mon.-thursday, 8:30-6:00, every fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JEANETTE CHAPMAN/  
PRIMARY EXAMINER  
ART UNIT 3633

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